

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOANN K. DRAGO,

Case No. 07-3067-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying her application for a period of disability and disability insurance benefits.

The administrative law judge erred by rejecting plaintiff's statements for plaintiff's refusal to try Botox injections recommended by several physicians. Plaintiff testified that she does not want this treatment, she spoke with Dr. Stone about the treatment, the treatment is not "100 percent" and is "still a real scary issue," and "quite frankly . . . being alone I don't want to be paralyzed sitting in a wheelchair drooling out the side of my mouth [the] rest of my life, so it's the one thing

that I have not tried." (Tr. 468, 470). Notwithstanding plaintiff's refusal to take Botox injections, the longitudinal medical record described by the ALJ supports plaintiff's credibility because it documents repeated attempts to seek and follow other prescribed treatments. Social Security Ruling 96-7p. Further, the ALJ did not find that plaintiff is ineligible for benefits due to an unexplained failure to follow a prescribed treatment that could restore her ability to work. See 20 C.F.R. § 404.1530.

When plaintiff's testimony regarding her limited ability to attend work is credited as true, the testimony of the vocational expert establishes that plaintiff is unable to perform other work and is disabled within the meaning of the Social Security Act. (Tr. 463, 466, 482-83).

Conclusion

Based on the foregoing, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for calculation and payment of benefits.

SO ORDERED.

DATED this 13th day of January, 2009.

s/ Michael R. Hogan
United States District Judge